

Date of decision: 10/01/96

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANAKSINH J CHAUHAN

vs

STATE OF GUJARAT

Appearance: MR IS SUPEHIA for Petitioner
MR. BAMBHANIA,AGP, for the Respondents

Coram : MR.JUSTICE R.BALIA.

ORAL JUDGEMENT

Rule. Mr. Bambhania, learned AGP, waives service of rule.
At the request of the parties, the matter has been heard finally.

The brief facts leading to the petition are that the petitioner is a member of the unarmed police force of the State of Gujarat and was removed from service on 24th July 1988, without holding any enquiry, by taking recourse to clause (b) to proviso of Article 311(2) of the Constitution of India, for his behaviour amounting to grave misconduct. However, the Government, after reviewing the case on humanitarian grounds, reviewed that order and the order of removal was revoked on 1st May 1991. The petitioner was reinstated in service and placed on

deputation at the disposal of the Gujarat Forest Development Corporation upto October 1992, with a rider that, if during this period he is found indulging in either directly or indirectly in any activities prejudicial to the discipline of the police force, he will not be taken back in the police department after expiry of the said period. By yet another order dated 11th November 1993, it was directed that the petitioner's services were to continue at the disposal of the Corporation until further orders. On 3/4th December 1993, the Deputy Conservator of Forest issued a notice to the petitioner stating that he should immediately report on duty in pursuance of the order dated 11th November 1993. On 17th December 1993, the petitioner communicated that, while the petitioner was on duty on 11th December 1991, he had proceeded on leave as the member of his family was taken ill and, therefore, he could not report on duty, about which he had informed the superior officers. Thereafter, again a written report was submitted by the petitioner on 19th May 1992. He further requested, in pursuance of the letter dated 4th December 1993 which was received by him on 16th December 1993, that he will report on duty after his wife recovers and, till then, he should be allowed to avail of sick leave and he further requested not to take any action against him. On 28th December 1993, the petitioner reported on duty with a request to submit a medical certificate later on. After the said incident, on 15th January 1994, the impugned order was made by the Joint Secretary to the Government of Gujarat, removing the petitioner from service on the ground that the petitioner has not performed his duties in the Corporation except for 23 days, and has remained absent from duty with effect from 23rd September 1991 until the date of passing of the order and such type of long period of unauthorised absence from duty was held against the discipline of police force on the part of the petitioner, which amounted to breach of condition No.5 of the order.

The petitioner challenged the order on the ground that his removal has been against the provisions of the Police Act as well as the provisions of Article 311 of the Constitution of India, in as much as no enquiry of any kind has been held in the alleged misconduct before the order of removal was passed. The fact that the order of removal has been passed without holding an enquiry into the alleged misconduct of wilful absent from duty without permission, has not been disputed by the learned counsel appearing on behalf of the respondent. It is not the case of the respondent that holding of enquiry has been dispensed with under any of the proviso to Article 311(2) of the Constitution of India. This ground alone is sufficient to quash the said order.

From the facts admitted by the petitioner in his petition as well as in his letter dated 17th December 1993 (at Annexure "E"), the following facts clearly emerge that, after 11th December 1991, when he left the office premises by informing the

officers about the sickness of a member of his family, he had not reported on duty and had submitted a written report on 19th May 1992. After 19th May 1992 also, there is no averment of the petitioner that he had made any further application for grant of leave of any kind until he received a notice to report on duty in pursuance of the order dated 11th November 1993. Then too, he requested only for time to report on duty, until there is improvement in the health of his wife and the petitioner has appeared to have reported on duty on 28th December 1993 before the Corporation, with a request to submit a medical certificate later on. It also clearly emerges from the undisputed facts that initially the petitioner was, on his reinstatement, placed on deputation with the Corporation until 31st October 1992 and, with effect from 1st November 1992, he had to report back to h....

was made until 11th November 1993. It is not the case of the petitioner either that he had reported on duty during this period before the parent department. It cannot be said that the petitioner had no knowledge about the terms of the order reinstating him. Under these circumstances, keeping in view the fact that the petitioner belongs to the disciplined cadre of police, it would be inappropriate to unconditionally reinstating him in service as a consequence of quashing of the impugned order.

Under the circumstances, the following directions are made:

- (i) The impugned order dated 15th January 1994 is quashed and set aside.
- (ii) The petitioner shall immediately report at the place of last posting. However, the authority shall be liberty to determine the place of his reporting there...
- (iii) However, respondent No.1 is directed to initiate appropriate enquiry against the petitioner in accordance with the rules within the period of three weeks from the date of receipt of the writ, and to complete the enquiry within the period of three months thereafter.
- (iv) During this period, the petitioner shall remain under suspension and the period during the enquiry shall be dealt with in accordance with the final outcome of the enquiry.
- (v) During the period of suspension, i.e., during the period of enquiry, the petitioner shall be paid only subsistence allowance as per the Rules.

(vi) The petitioner shall not be entitled to any wages during the period of his absence from duty.

Rule is made absolute in the terms stated above. The interim relief stands vacated. There shall be no order as to costs.
